



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33961361

Date: OCT. 1, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a civil engineer, seeks first preference immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the analysis below.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) also allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner demonstrates that the beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner claims to be an individual of extraordinary ability based on his skills and experience as a civil engineer specializing in structural fire engineering. The record shows that the Petitioner earned a doctoral degree in structural engineering. He has published scholarly articles discussing his research findings concerning properties of fire-resistant structural steel and aluminum alloy materials at varied temperatures. The Petitioner also co-authored a book on fire resistance of steel structures and was listed as a "main author" in a publication pertaining to the [] engineering construction standard and was a "main drafter" of two other publications – one pertaining to [] engineering construction code and another pertaining to China's national code for fire safety of steel structures in buildings. The Petitioner was also listed as an inventor in over 20 approved patents in China and one patent that was granted in the United States. The Petitioner states that he intends to use his expertise in the field of structural fire engineering to operate his own business where he intends to provide fire protection design and consultancy services.

Because the Petitioner has not indicated or established his receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that he meets the five regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iv) - (vi). The Director concluded, and we agree, that the Petitioner met the criteria listed at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence demonstrating a petitioner's participation as a judge of the work of others in the same or an allied field, and 8 C.F.R. § 204.5(h)(3)(vi), which requires evidence of the Petitioner's authorship of scholarly articles in a

major trade publication. However, the Director concluded that the Petitioner did not meet the three remaining claimed criteria.

On appeal, the Petitioner asserts that he meets the three remaining criteria and is otherwise eligible for the requested classification. He contends that the Director overlooked or assessed certain evidence in a way that is not consistent with the regulations or U.S. Citizenship and Immigration Services policy. Upon review, we conclude that the record supports the Petitioner's assertion that he met the criterion listed at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence showing that the Petitioner made original contributions of major significance in his field. As mentioned above, the record shows that aside from his published research, the Petitioner was a primary drafter of published regional and national standards which incorporate the Petitioner's findings regarding structural fire engineering. The originality of the Petitioner's work is further demonstrated through his contributions as an inventor to over 20 inventions for which patents were granted in China and one invention for which a patent was granted in the United States.

The director may want to consider in the final merits the significance of the Petitioner's contributions based on evidence that the Petitioner received several prizes where such contributions were included in the judging criteria. For instance, the record shows that the Petitioner was among the first-prize winners of a [] Science and Technology award, which is described as an annual "national industry award" whose purpose is "to reward the collectives and individual who have made important contributions to the progress of science and technology." The Petitioner also won two second prize [] Science & Technology Progress Awards which required that he meets one of these characteristics: 1) contribution "to economic development, crating significant economic benefits, and of great significance to the technological progress of the industry and the adjustment of industrial structure"; 2) achievement of "significant social benefits and being of great significance to scientific and technological development . . . and improvement of people's livelihood"; or 3) the candidate made an "outstanding transformation and application of scientific and technological innovation achievements, and great contributions to the urban construction and development of this city."

In sum, the totality of the evidence demonstrates that the Petitioner has satisfied the criterion listed at 8 C.F.R. § 204.5(h)(3)(v). With eligibility under the three criteria discussed above, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director's decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. As noted above, where a petitioner demonstrates that the beneficiary meets these initial evidentiary requirements, we then consider the totality of the material provided, including the awards referenced above, in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1115, section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3). The Director did not reach a finding on the final merits, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.